

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO H.R. 3094
OFFERED BY MR. KLINE**

Strike all after the enacting clause and insert the following:

1 SECTION 1. SHORT TITLE.

2 This Act may be cited as the “Workforce Democracy
3 and Fairness Act”.

4 SEC. 2. TIMING OF ELECTIONS.

5 Section 9 of the National Labor Relations Act (29
6 U.S.C. 159) is amended—

7 (1) in subsection (b), by striking “The Board
8 shall decide” and all that follows through “*Provided,*
9 That the” and inserting: “In each case, prior to an
10 election, the Board shall determine, in order to as-
11 sure to employees the fullest freedom in exercising
12 the rights guaranteed by this Act, the unit appro-
13 priate for the purposes of collective bargaining. Un-
14 less otherwise stated in this Act, and excluding bar-
15 gaining unit determinations promulgated through
16 rulemaking effective before August 26, 2011, the
17 unit appropriate for purposes of collective bargaining
18 shall consist of employees that share a sufficient

1 community of interest. In determining whether em-
2 ployees share a sufficient community of interest, the
3 Board shall consider (1) similarity of wages, bene-
4 fits, and working conditions; (2) similarity of skills
5 and training; (3) centrality of management and com-
6 mon supervision; (4) extent of interchange and fre-
7 quency of contact between employees; (5) integration
8 of the work flow and interrelationship of the produc-
9 tion process; (6) the consistency of the unit with the
10 employer's organizational structure; (7) similarity of
11 job functions and work; and (8) the bargaining his-
12 tory in the particular unit and the industry. To
13 avoid the proliferation or fragmentation of bar-
14 gaining units, employees shall not be excluded from
15 the unit unless the interests of the group sought are
16 sufficiently distinct from those of other employees to
17 warrant the establishment of a separate unit.
18 Whether additional employees should be included in
19 a proposed unit shall be based on whether such addi-
20 tional employees and proposed unit members share
21 a sufficient community of interest, with the sole ex-
22 ception of proposed accretions to an existing unit, in
23 which the inclusion of additional employees shall be
24 based on whether such additional employees and ex-
25 isting unit members share an overwhelming commu-

1 nity of interest and the additional employees have
2 little or no separate identity. The”;

3 (2) in subsection (c)(1), in the matter following
4 subparagraph (B)—

5 (A) by inserting “, but in no circumstances
6 less than 14 calendar days after the filing of
7 the petition” after “hearing upon due notice”;

8 (B) by inserting before the last sentence
9 the following: “An appropriate hearing shall be
10 one that is non-adversarial with the hearing of-
11 ficer charged, in collaboration with the parties,
12 with the responsibility of identifying any rel-
13 evant and material pre-election issues and
14 thereafter making a full record thereon. Rel-
15 evant and material pre-election issues shall in-
16 clude, in addition to unit appropriateness, the
17 Board’s jurisdiction and any other issue the
18 resolution of which may make an election un-
19 necessary or which may reasonably be expected
20 to impact the election’s outcome. Parties may
21 raise independently any relevant and material
22 pre-election issue or assert any relevant and
23 material position at any time prior to the close
24 of the hearing.”;

25 (C) in the last sentence—

1 (i) by inserting “or consideration of a
2 request for review of a regional director’s
3 decision and direction of election,” after
4 “record of such a hearing”; and

5 (ii) by inserting “to be conducted as
6 soon as practicable but not less than 35
7 calendar days following the filing of an
8 election petition” after “election by secret
9 ballot”; and

10 (D) by adding at the end the following:
11 “Not earlier than 7 days after final determina-
12 tion by the Board of the appropriate bargaining
13 unit, the Board shall acquire from the employer
14 a list of all eligible voters to be made available
15 to all parties, which shall include the employee
16 names, and one additional form of personal em-
17 ployee contact information (such as telephone
18 number, email address or mailing address) cho-
19 sen by the employee in writing.”.

